THE STATE OF NEW HAMPSHIRE SUPREME COURT

2012 TERM

Case No. 2012-0729

In re: Local Government Center, Inc., et al.

BUREAU OF SECURITIES REGULATION'S OBJECTION TO PROPOSED INTERVENORS' MOTION FOR STAY OF SEPTEMBER 1, 2013 DEADLINES

NOW COMES the Appellee, the New Hampshire Bureau of Securities Regulation (the "Bureau"), through counsel the New Hampshire Attorney General and Bernstein, Shur, Sawyer & Nelson, P.A., and objects to the Motion for Stay submitted by the Towns of Durham, Northfield, Peterborough, and Salem (collectively the "Proposed Intervenors").

- 1. As a preliminary matter, the Bureau notes that the Proposed Intervenors are not currently parties to the instant appeal, and therefore do not have standing to file a motion for a stay. In its March 7, 2013 Order, this Court expressly deferred a ruling on the Proposed Intervenors' petition for intervention, and to date the Court has not granted party status to the Proposed Intervenors. Accordingly, the Proposed Intervenors' motion is not ripe and should be set aside.
- 2. Even assuming the motion is properly before this Court, the Proposed Intervenors have failed to satisfy either the procedural or substantive requirements for a stay.
- 3. Pursuant to Supreme Court Rule 7-A, a "motion to stay an order or judgment of a lower tribunal shall not be filed in this Court unless the movant has first unsuccessfully sought similar relief from the lower tribunal." Supreme Court R. 7-A(1). The Proposed Intervenors did

not seek a stay from the Presiding Officer in the administrative proceeding below, and therefore are not eligible to seek a stay from the Court.

- 4. While Rule 7-A does allow waiver of this requirement "upon motion in extraordinary circumstance," the Proposed Intervenors have not sought such a waiver. Moreover, the Proposed Intervenors cannot demonstrate "extraordinary circumstances" for their failure to seek a stay from the Presiding Officer below.
- 5. The Proposed Intervenors had the opportunity to file a request for rehearing and a motion to stay following issuance of the Presiding Officer's Final Order, but chose not to do so. See R.S.A. 541:3 (empowering "any person directly affected" by an administrative order to "apply for a rehearing"); R.S.A. 421-B:26-a, XXVIII (allowing a motion for stay to be combined with a motion for reconsideration). Having failed to seek a rehearing or a stay below, the Proposed Intervernors have no grounds upon which to demonstrate the requisite "extraordinary circumstances."
- 6. On procedural grounds alone, the Proposed Intervenors' request for a stay should be denied.
- 7. The Proposed Intervenors' request similarly fails on substantive grounds. In Union Fidelity Life Ins. Co. v. Whaland, 114 N.H. 549 (1974), this Court identified the conditions that must be satisfied by a party seeking a stay:

First, there must be a showing that the plaintiff will suffer irreparable harm, occasioned by circumstances beyond his control, if the order is given immediate effect. Second, it must be clear that the harm to the plaintiff outweighs the public interest in enforcing the order for the duration of the appeal.

114 N.H. at 549. Here, the Proposed Intervenors have failed to even allege that they will suffer irreparable harm in the absence of a stay.

- 8. Unlike most cases in which a stay is sought, enforcement of the Final Order in this case does not result in an immediate impact. The Proposed Intervenors are concerned with a deadline for compliance that does not fall for more than 4 months. The Proposed Intervenors cannot demonstrate an immediate irreparable harm because no change in the status quo will occur before September 1, 2013. It is therefore premature for the Proposed Intervenors to seek, or for this Court to consider, a stay of the Final Order.
- 9. In addition, the Proposed Intervenors have not demonstrated that they lack an adequate remedy at law for any harm potentially incurred upon full enforcement of the Final Order. As previously noted by the Bureau, to the extent that the Proposed Intervenors claim that they have been denied funds to which they are due under their contractual agreements with Appellants, the Proposed Intervenors may have available private rights of action against the Appellants-outside of the administrative process. ——
- 10. Similarly, the Proposed Intervenors have not addressed whether their alleged harm "outweighs the public interest in enforcing the order for the duration of the appeal." The result of the relief sought by the Proposed Intervenors would be further delaying the return of funds to dozens of municipalities, school districts, retirees, and other entities who were overcharged by the Appellants. The public interest weighs strongly in favor of enforcement of the Final Order and the timely return of funds to the injured parties.
- 11. Finally, this Court has already denied a previous request for a stay after extensive briefing by the parties. The Proposed Intevenors have not developed a clear argument or met

¹ The Bureau notes that another portion of the relief granted in the Final Order—repayment of the \$17.1 million subsidy to the Local Government Center Health Trust risk pool—is not required until December 1, 2013. Final Order at 78, ¶ 13.

their burden to demonstrate a significant need for the extraordinary relief of a stay of the Presiding Officer's Final Order.

WHEREFORE, the Bureau of Securities Regulation respectfully requests that this Honorable Court deny the Motion for Stay of September 1, 2013 Deadlines and grant such additional relief as is fair and just.

Dated this 18th day of April, 2013

Respectfully submitted,

The State of New Hampshire, Bureau-of-Securities-Regulation-By its attorneys,

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Certificate

I hereby certify that the foregoing Objection to Motion for Stay was provided to counsel for the Towns of Durham, Northfield, Peterborough, and Salem, Joshua L. Gordon, Esq., and to counsel of record for the Local Government Center, Inc. and its affiliates, Preti, Flaherty and Ramsdell Law Office by U.S. Mail, postage prepaid, this 18th day of April 2013.

Andru H. Volinsky, Esq.